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BARRY SKIDELSKY

Attorney at Law

FEDERAL COMMUNICATIONS COMMISSION

655 MADISON AVENUE • 19th FLOOR • NEW YORK, NEW YORK 10021 • TELEPHONE (212) 832-4800 • FAX (212) 486-8668
OFFICE OF THE SECRETARY

William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

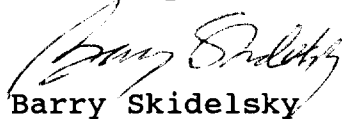
August 9, 1993

Dear Mr. Caton:

Transmitted herewith for filing are 1 original and 11 copies of my Petition for Reconsideration of the Commission's Report and Order (FCC 93-299; released July 13, 1993) in MM Docket No. 92-159 (Amendment of the Commission's Rules To Permit FM Channel and Class Modification by Application).

If there are any problems or questions, please contact me; and, thanks.

Cordially,


Barry Skidelsky

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att.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Amendment of the Commission's Rules To Permit FM Channel and Class Modification by Application

MM Docket No.
92-159

PETITION FOR RECONSIDERATION

1. On August 4, 1992, the Commission released a Notice of Proposed Rule-Making ("NPRM"), FCC 92-330, in which the Commission proposed to change its rules governing certain modifications of existing FM authorizations.

2. In relevant part, the NPRM proposed to streamline the Commission's current two-step process, by eliminating the rule-making step and instead allowing a licensee or permittee to seek some modifications by application alone using allotment standards.

3. On July 13, 1993, the Commission released a Report and Order, FCC 93-299 ("R&O"), which adopted a one-step process. This Petition for Reconsideration primarily seeks clarification if not modification of that part of the R&O which addresses "Protection of Core Allotment Policy Objectives." See R&O at paragraphs 11-14.

4. In his Comments, Skidelsky supported the adoption of a one-step process; and, he concurred with the Commission that limitations are desirable to avoid harming core policy objectives, such as those reflected in the Commission's technical rules regarding separation and city grade coverage.

5. Thus, the R&O (at 11) mentions that the "NAB and Skidelsky argue[d] that any application filed pursuant to the one-step process should meet both application criteria and our allotment standards." Skidelsky believes that full compliance with current allotment standards (i.e.: requiring 100% city grade coverage and no short-spacing) protects the core allotment policy objectives in issue.

6. Apparently, the Commission concurs. In the R&O at 13, it states that: "preservation of those allotment standards is necessary"; and, "it would be contrary to sound allotment policy for parties to receive modifications by using the one-step process that would be denied under the two-step process."

7. Moreover, the Commission elaborates that its actions in the R&O are intended to merely follow established practice; and, that it does not intend to expand the use of contour protection (re spacing), nor presumably substantial compliance (re city grade coverage) ¹. See R&O at 13, last 2-3 sentences.

8. In seeking to make its intentions "abundantly clear", the Commission suggests that a one-step application would be dismissed for failure to meet allotment standards. R&O at 14.

¹ The Commission should clarify whether it also does not intend to expand the use of "substantial compliance."

9. However, the Commission confuses the matter when it states that: "applicants should be permitted to apply for a station modification under the one-step process at a site which complies with all application criteria, even if that site would not meet allotment standards." R&O at 13.

10. The Commission seems to say that a licensee or permittee may submit an FM modification application which does not fully comply with separation and city-grade allotment standards, so long as a separate exhibit is attached which shows that a theoretical allotment reference site does fully comply ².

11. Does the Commission intend to approve an application proposing a non-compliant site, so long as a compliant theoretical allotment site exists elsewhere? If so, does the use of such fiction protect or merely give lip service to the core allotment policy objectives in issue?

12. Does not full compliance with the allotment standards (i.e.: requiring 100% city grade coverage and no short-spacing) protect the Commission's core allotment policy objectives? If so, why not require an actual (application), not theoretical (allotment), showing of full compliance?

13. What remains of Greenwood, South Carolina, 3 FCC 7 Rcd 4108 (1988), corrected, 3 FCC Rcd 4374 (1988) (allotment standard requires 100% city grade coverage per section 73.315 of the Rules)? Is 100% city grade coverage no longer necessary? Is the provision of 100% city grade coverage important?

² The Commission should clarify the availability and suitability showings required for both allotment and application sites.

14. The Commission should clarify if not modify its R&O to answer the questions above and to truly make clear when full compliance with both separation and city-grade coverage allotment standards is required. Lastly, in accord with the foregoing, Skidelsky suggests that the proposed Notes to Sections 73.203(b) and 73.3573, as set forth in Appendix A of the R&O, be clarified and revised as appropriate to insert one or more references to "substantial compliance" in connection with Section 73.315 (re city grade coverage) such as the bold text below, which would mirror the "without resort to" reference already proposed regarding Section 73.207 (re spacing and "contour protection" [73.213-215]).

"Note: ...[a]pplications which meet the minimum spacing requirements of Section 73.207 of the Rules, without resort to (emphasis added) the provisions of the Commission's Rules permitting short spaced stations as set forth in Sections 73.213-215 of the Rules, and which also fully comply with the city grade coverage requirements of Section 73.315 of the Rules, without resort to any determination of "substantial compliance (per Southwest Communications, Inc., released July 16, 1986, letter from Chief, FM Branch) ..."

Respectfully submitted,


Barry Skidelsky

655 Madison Avenue
19th floor
New York, NY 10021

August 9, 1993

(212) 832-4800